

House File 2154 - Introduced

HOUSE FILE 2154

BY ISENHART

A BILL FOR

1 An Act relating to the incorporation and governance of benefit
2 corporations, and providing for fees.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **490.102A Benefit corporation.**

2 A corporation may incorporate as a benefit corporation
3 as provided in chapter 490B. A benefit corporation shall be
4 subject to this chapter as a corporation, except as otherwise
5 provided in chapter 490B.

6 SUBCHAPTER I

7 PRELIMINARY PROVISIONS

8 Sec. 2. NEW SECTION. **490B.101 Short title.**

9 This chapter is entitled and may be cited as the "*Iowa*
10 *Benefit Corporation Act*".

11 Sec. 3. NEW SECTION. **490B.102 Application and effect of**
12 **chapter.**

13 1. *General rule.* This chapter shall be applicable to all
14 benefit corporations.

15 2. *Application of business corporation law generally.* The
16 existence of a provision of this chapter shall not of itself
17 create any implication that a contrary or different rule of law
18 is or would be applicable to a business corporation organized
19 under chapter 490 that is not a benefit corporation. This
20 chapter shall not affect any statute or rule of law that is or
21 would be applicable to a business corporation organized under
22 chapter 490 that is not a benefit corporation as provided in
23 this chapter.

24 3. *Laws applicable to benefit corporations.* Except as
25 otherwise provided in this chapter, a benefit corporation shall
26 be subject to the provisions of chapter 490. However, the
27 specific provisions of this chapter as applied to a benefit
28 corporation shall control over the general provisions or
29 conflicting provisions of chapter 490.

30 4. *Organic records may not be inconsistent.* A provision
31 of the articles of incorporation or bylaws of a benefit
32 corporation shall not relax, be inconsistent with, or supersede
33 any provision of this chapter.

34 Sec. 4. NEW SECTION. **490B.103 Definitions.**

35 As used in this chapter, unless the context otherwise

1 requires:

2 1. "*Benefit corporation*" means a business corporation
3 organized and incorporated under chapter 490 that has elected
4 to become subject to this chapter and whose status as a benefit
5 corporation under this chapter has not been terminated as
6 provided in this subchapter.

7 2. "*Benefit director*" means a director designated as the
8 benefit director of a benefit corporation as provided in
9 section 490B.302.

10 3. "*Benefit enforcement proceeding*" means a claim or action
11 brought directly by a benefit corporation, or derivatively on
12 behalf of a benefit corporation, against a director or officer
13 for any of the following:

14 a. A failure to pursue the general public benefit purpose of
15 the benefit corporation or any specific public benefit purpose
16 set forth in its articles.

17 b. A violation of a duty or standard of conduct under this
18 chapter.

19 4. "*Benefit officer*" means an officer of a benefit
20 corporation, if any, as provided in section 490B.304.

21 5. "*Business corporation*" or "*corporation*" means a
22 corporation organized and incorporated under chapter 490.

23 6. "*General public benefit*" means a material positive impact
24 on society or the environment, by the operations of a benefit
25 corporation taken as a whole, as measured by a third-party
26 standard, through activities that promote a general public
27 benefit or any specific public benefit or some combination of
28 specific public benefits.

29 7. a. "*Independent*" means that a person does not have a
30 material relationship with a benefit corporation or any of
31 its subsidiaries, either directly as a shareholder, partner,
32 member, or other owner or as a director, officer, or other
33 manager of an association that has a material relationship with
34 the benefit corporation or any of its subsidiaries.

35 b. A person may be "*independent*" even if the person serves

1 as a benefit director or benefit officer as provided in this
2 chapter.

3 c. A material relationship between a person and a benefit
4 corporation or any of its subsidiaries shall be conclusively
5 presumed to exist if one or more of the following applies:

6 (1) The person is, or has been within the last three
7 years, an employee of the benefit corporation or any of its
8 subsidiaries, other than as a benefit officer.

9 (2) An immediate family member of the person is, or has
10 been within the last three years, an executive officer, other
11 than a benefit officer, of the benefit corporation or any of
12 its subsidiaries.

13 (3) The person, or an association of which the person
14 is a director, officer, or other manager, owns beneficially
15 or of record five percent or more of the outstanding equity
16 interest, or owns beneficially or of record five percent or
17 more of the outstanding shares of the benefit corporation. A
18 percentage of ownership in an association shall be calculated
19 as if all outstanding rights to acquire equity interests in the
20 association had been exercised.

21 8. "*Minimum status vote*" means that, in addition to any
22 other approval or vote required by chapter 490 or by the
23 articles of incorporation of a benefit corporation or a bylaw
24 adopted by a benefit corporation pursuant to chapter 490, all
25 of the following apply:

26 a. The holders of shares of every class or series shall
27 be entitled to vote on the corporate action regardless of any
28 limitation on the voting rights of any class or series stated
29 in the articles of incorporation or bylaws.

30 b. The corporate action must be approved by vote of the
31 shareholders of each class or series entitled to cast votes by
32 at least two-thirds of the votes that all shareholders of the
33 class or series are entitled to cast thereon.

34 9. "*Specific public benefit*" includes any of the following:

35 a. Providing low-income or underserved individuals or

1 communities with beneficial products or services.

2 *b.* Promoting economic opportunity for individuals or
3 communities beyond the creation of jobs in the normal course
4 of business.

5 *c.* Preserving the environment.

6 *d.* Improving human health.

7 *e.* Promoting the arts, sciences, or advancement of
8 knowledge.

9 *f.* Increasing the flow of capital to entities with a public
10 benefit purpose.

11 *g.* Accomplishing any other particular benefit for society
12 or the environment.

13 10. "*Subsidiary*" means an entity in which fifty or more of
14 the entity's outstanding equity interest is owned or otherwise
15 held by another person. A percentage of ownership in an
16 association shall be calculated as if all outstanding rights to
17 acquire equity interests in the association had been exercised.

18 11. "*Third-party standard*" means a recognized standard
19 for defining, reporting, and assessing corporate social or
20 environmental performance that is all of the following:

21 *a.* Developed by a person that is independent of the benefit
22 corporation.

23 *b.* Transparent because the following information about the
24 standard is publicly available:

25 (1) The factors considered when measuring the performance
26 of a business.

27 (2) The relative weighting of those factors.

28 (3) The identity of each person who developed and controlled
29 changes to the standard and the process by which those changes
30 were made.

31 Sec. 5. NEW SECTION. 490B.104 **Formation of benefit**
32 **corporations.**

33 A benefit corporation shall be organized in accordance
34 with chapter 490 except that its articles of incorporation
35 as provided in section 490.202 shall also state that it is a

1 benefit corporation.

2 Sec. 6. NEW SECTION. **490B.105 Election of an existing**
3 **business corporation to become a benefit corporation.**

4 1. *Amendment.* A business corporation may become a benefit
5 corporation under this chapter by amending its articles of
6 incorporation so that the articles contain, in addition to
7 the requirements of section 490.202, a statement that the
8 corporation is a benefit corporation. The amendment shall not
9 be effective unless it is adopted by at least a minimum status
10 vote.

11 2. *Fundamental transactions.* A business corporation that
12 is not a benefit corporation may be a party to a merger,
13 share exchange, or conversion in which the surviving, new or
14 resulting business corporation is a benefit corporation. In
15 that case, the plan of merger or share exchange or the plan of
16 conversion, as provided in chapter 490, division XI, shall not
17 be effective unless it is adopted by the business corporation
18 by a minimum status vote.

19 Sec. 7. NEW SECTION. **490B.106 Termination of benefit**
20 **corporation status.**

21 1. *Amendment.* A business corporation may terminate its
22 status as a benefit corporation and cease to be subject to
23 this chapter by amending its articles of incorporation to
24 delete the provision required to be included in the articles of
25 incorporation by section 490B.104 or 490B.105. The termination
26 of status must be stated in the articles of incorporation
27 as provided in section 490.202. The amendment shall not be
28 effective unless it is adopted by at least a minimum status
29 vote.

30 2. *Fundamental transaction.* If any plan adopted under
31 chapter 490 would have the effect of terminating the status of
32 a business corporation as a benefit corporation, the plan shall
33 not be effective unless it is adopted by a minimum status vote.

34 SUBCHAPTER II

35 CORPORATE PURPOSE

1 benefit corporation, when discharging their respective duties
2 shall consider all of the following when considering the best
3 interests of the benefit corporation:

4 *a.* The director shall consider the effects of any action
5 considered by the benefit corporation upon all of the
6 following:

7 (1) The shareholders of the benefit corporation.

8 (2) The employees and workforce of the benefit corporation.

9 (3) The subsidiaries and suppliers of the benefit
10 corporation.

11 (4) The interests of customers as beneficiaries of the
12 benefit corporation.

13 (5) Any community and societal considerations impacted
14 by the action, including impacts upon any community in which
15 offices or facilities of the benefit corporation or its
16 subsidiaries or suppliers are located.

17 (6) The local and global environment.

18 (7) The short-term and long-term interests of the benefit
19 corporation, including benefits that may accrue to the benefit
20 corporation from its long-term plans and the possibility
21 that these interests may be best served by the continued
22 independence of the benefit corporation.

23 *b.* The director may consider any of the following:

24 (1) The resources, intent, and conduct, including past,
25 stated, and potential conduct of any person seeking to acquire
26 control of the corporation.

27 (2) Any other pertinent factors or the interests of any
28 other group that the director deems appropriate.

29 *c.* The director shall not be required to give priority to
30 the interests of any particular person or group referred to in
31 paragraph "a" or "b" over the interests of any other person or
32 group unless the benefit corporation has stated its intention
33 to give priority to interests related to a specific public
34 benefit purpose identified in its articles of incorporation.

35 2. *Coordination with other provisions of law.*

1 *a.* The consideration of interests or factors as required by
2 subsection 1, or action based on such consideration, is not a
3 violation of section 490.830.

4 *b.* The consideration of such interests or factors shall
5 be in addition to the ability of directors to do all things
6 necessary or convenient to carry out the business and affairs
7 of the benefit corporation as provided in section 490.302 or
8 490.303.

9 3. *Exoneration from liability.* A director is not liable for
10 any action taken as a director if the director performed the
11 duties of his or her office in compliance with section 490.830
12 and this section.

13 Sec. 10. NEW SECTION. **490B.302 Benefit director.**

14 1. *General rule.* The board of directors of a benefit
15 corporation shall include one director who shall be designated
16 by the board as the benefit director. The benefit director
17 shall have, in addition to all of the powers, duties,
18 rights, and immunities of the other directors of the benefit
19 corporation as provided in chapter 490, including section
20 490.801, the powers, duties, rights, and immunities provided
21 in this subchapter.

22 2. *Election, removal, and qualifications.* A benefit director
23 shall be elected, and may be removed, in the same manner as
24 other directors as provided in chapter 490, division VIII.

25 *a.* The benefit director shall be an individual who is
26 independent.

27 *b.* The benefit director may serve as the benefit officer at
28 the same time as serving as the benefit director.

29 *c.* The articles of incorporation or bylaws of the benefit
30 corporation may prescribe additional qualifications of the
31 benefit director not inconsistent with this subchapter.

32 3. *Annual compliance verification statement.* A benefit
33 director shall prepare a benefit compliance verification
34 statement as provided in this subsection.

35 *a.* The benefit compliance verification statement shall

1 be an opinion rendered by the benefit director that during
2 the reporting period all of the following requirements were
3 satisfied:

4 (1) The benefit corporation acted in accordance with
5 its general public benefit purpose, and any specific, public
6 benefit purpose, as provided in section 490B.201 in all
7 material respects.

8 (2) The directors and officers of the benefit corporation
9 complied with section 490B.301, subsection 1, and section
10 490B.303, subsection 1.

11 *b.* If the requirements provided in paragraph "a" have not
12 been satisfied, the benefit compliance verification statement
13 shall include a description of the ways in which the benefit
14 corporation or its directors or officers failed to satisfy
15 those requirements.

16 4. *Status of actions.* An act of an individual in the
17 capacity of a benefit director shall constitute an act of
18 that individual in the capacity of a director of the benefit
19 corporation.

20 5. *Alternative governance arrangements.* To the extent that
21 section 490.732 or 490.801 authorizes a person or persons other
22 than the benefit corporation's board of directors to exercise
23 the authority of, and the business and affairs of, the benefit
24 corporation, then the articles of incorporation or bylaws of
25 the benefit corporation must provide for the designation of a
26 person with the powers, duties, rights, and immunities of a
27 benefit director.

28 6. *Exoneration from liability.* Regardless of whether the
29 articles of incorporation or bylaws of a benefit corporation
30 include a provision eliminating or limiting the liability of
31 its board of directors, a person who is a benefit director
32 shall not be liable for any act or omission in the person's
33 capacity as a benefit director, unless the person's act or
34 omission constitutes self-dealing, willful misconduct, or a
35 knowing violation of law.

1 Sec. 11. NEW SECTION. **490B.303 Standard of conduct for**
2 **officers.**

3 1. *General rule.* An officer of a benefit corporation
4 shall consider the interests and factors described in section
5 490B.301, subsection 1, in the manner provided in that
6 subsection when all of the following apply:

7 a. The officer has discretion to act with respect to a
8 matter.

9 b. It reasonably appears to the officer that the matter may
10 have a material effect on any of the following:

11 (1) The creation of a general public benefit or specific
12 public benefit of the benefit corporation as provided in
13 section 490B.201.

14 (2) Any of the interests or factors described in section
15 490B.301, subsection 1.

16 2. *Coordination with other provisions of law.* An officer's
17 use of discretion as provided in subsection 1 shall not
18 constitute a violation of section 490.842.

19 3. *Exoneration from liability.* An officer is not liable for
20 any action taken as an officer if the officer performed the
21 duties of the position in compliance with sections 490.841 and
22 490.842 and this section.

23 Sec. 12. NEW SECTION. **490B.304 Benefit officer.**

24 1. A benefit corporation may have an officer designated the
25 "benefit officer" as provided in this section.

26 2. A benefit officer shall have such authority and
27 shall perform such duties in the management of the benefit
28 corporation relating to the purpose of the corporation to
29 create a general or specific public benefit pursuant to section
30 490B.201, as may be provided by any of the following:

31 a. The articles of incorporation.

32 b. The bylaws.

33 c. A resolution or order of the board of directors as
34 authorized in chapter 490.

35 3. A benefit officer shall prepare a benefit report required

1 by section 490B.401.

2 Sec. 13. NEW SECTION. **490B.305 Right of action.**

3 1. *General rule.* The duties of directors and officers of a
4 benefit corporation under this chapter, and the general public
5 benefit purpose and any specific public benefit purpose of a
6 benefit corporation as provided in section 490B.201, may be
7 enforced only in a benefit enforcement proceeding. A person
8 shall not bring an action or assert a claim against a benefit
9 corporation or its directors or officers with respect to the
10 duties of directors and officers under this chapter and the
11 general benefit public purpose and any specific public benefit
12 purpose of the benefit corporation as provided in section
13 490B.201, except in a benefit enforcement proceeding.

14 2. *Parties with standing.* A benefit enforcement proceeding
15 may be commenced or maintained only by any of the following:

16 a. Directly by the benefit corporation.

17 b. Derivatively by any of the following:

18 (1) Notwithstanding section 490.741, a shareholder of the
19 benefit corporation who was a shareholder of the corporation
20 at the time of the act or omission complained of or became a
21 shareholder through transfer by operation of law from one who
22 was a shareholder at that time.

23 (2) A director of the benefit corporation.

24 (3) A person or group of persons that owns beneficially or
25 of record ten percent or more of the equity interests in an
26 entity of which the benefit corporation is a subsidiary.

27 (4) A person or a group of persons as may be specified in
28 the articles or bylaws of the benefit corporation.

29 SUBCHAPTER IV

30 TRANSPARENCY

31 Sec. 14. NEW SECTION. **490B.401 Annual benefit report.**

32 1. *General rule.* Each year, a benefit corporation shall
33 deliver to each shareholder an annual benefit report. For each
34 reporting year the benefit report shall include all of the
35 following:

1 *a.* A narrative description of all of the following:

2 (1) The ways in which the benefit corporation pursued a
3 general public benefit stated its articles of incorporation
4 as provided in section 490B.201 and the extent to which the
5 general public benefit was created.

6 (2) The ways in which the benefit corporation pursued or
7 created any specific public benefit stated in its articles of
8 incorporation as provided in section 490B.201 and the extent to
9 which that specific public benefit was created.

10 *b.* Any circumstances that hindered the creation by the
11 benefit corporation of a general public benefit or specific
12 public benefit during the reporting year as stated in its
13 articles of incorporation as provided in section 490B.201.

14 *c.* An assessment of the social or environmental performance
15 of the benefit corporation, prepared in accordance with a
16 third-party standard applied consistently with any application
17 of that standard in prior benefit reports or accompanied by an
18 explanation of the reasons for any inconsistent application.

19 *d.* The name of the benefit director and the name of
20 the benefit officer, if any, and the address to which
21 correspondence to each of them may be directed.

22 *e.* The compensation paid by the benefit corporation during
23 the year to each director acting in that capacity.

24 *f.* The name of each person who owns five percent or more
25 of the outstanding shares of the benefit corporation either
26 beneficially, to the extent known to the benefit corporation
27 without independent investigation, or of record.

28 *g.* A compliance verification statement prepared by the
29 benefit director as provided in section 490B.302.

30 2. *Timing of report.* The benefit report shall be delivered
31 annually to each shareholder within one hundred twenty days
32 following the end of the fiscal year of the benefit corporation
33 or at the same time that the benefit corporation delivers any
34 other annual report to its shareholders.

35 3. *Internet posting.* A benefit corporation shall post the

1 corporation's most recent benefit report on the public portion
2 of the corporation's internet site, if any. However, the
3 benefit corporation may omit compensation paid to directors
4 and any financial or proprietary information included in the
5 benefit report as posted.

6 4. *Filing of report.* Concurrently with the delivery of the
7 benefit report to shareholders pursuant to subsection 2, the
8 benefit corporation must deliver a copy of the benefit report
9 to the secretary of state for filing. However, the benefit
10 corporation may omit compensation paid to directors of the
11 board of directors and any financial or proprietary information
12 included in the benefit report filed under this section. The
13 secretary of state shall charge a fee of seventy dollars for
14 filing a benefit report.

15 5. *Failure to file report.* If a benefit corporation does
16 not deliver a benefit report to the secretary of state for a
17 period of two years, the secretary of state may prepare and
18 file a statement that the corporation has forfeited its status
19 as a benefit corporation and is no longer subject to this
20 chapter. If the corporation subsequently delivers a benefit
21 report to the secretary of state for filing, the status of the
22 corporation as a benefit corporation shall be automatically
23 reinstated upon the filing of the benefit report by the
24 secretary and the corporation shall again be subject to this
25 chapter.

26 EXPLANATION

27 GENERAL. This bill allows a business corporation to
28 incorporate and operate as a new but related business entity
29 referred to as a benefit corporation, generally subject to the
30 Iowa business corporation Act (Code chapter 490) except as
31 provided in the bill's new Code chapter (Code chapter 490B).
32 The bill provides that a benefit corporation must have a
33 corporate purpose of creating a public benefit which provides
34 some material positive impact on society or the environment
35 as assessed against a third-party standard. Its board of

1 directors, in addition to its fiduciary duty to make decisions
2 based on financial interests, must also consider factors
3 associated with furthering a public benefit. The bill also
4 requires the board to provide and publish an annual report
5 to its shareholders explaining how it furthered that public
6 benefit.

7 ARTICLES OF INCORPORATION. The bill provides that a benefit
8 corporation's articles of incorporation may list one or more
9 specific public purposes, including providing low-income or
10 underserved individuals or communities with beneficial products
11 or services, promoting economic opportunity beyond the creation
12 of jobs in the normal course of business, preserving the
13 environment, improving human health, promoting the arts or
14 sciences, or increasing the flow of capital to entities with a
15 public benefit purpose.

16 ELECTION TO ATTAIN OR TERMINATE BENEFIT CORPORATE STATUS.
17 A business corporation attains or terminates its status as a
18 benefit corporation by shareholder election. The election
19 must be by an affirmative vote of at least two-thirds of each
20 of the corporation's classes of shareholders, or a higher
21 vote threshold if required in its articles of incorporation
22 (referred to as a "minimum status vote").

23 BOARD ACTION. The bill requires the board of directors to
24 consider the effects of its actions upon its shareholders,
25 employees, and workforce; subsidiaries and suppliers; customers
26 as beneficiaries of the general or specific public benefit
27 purposes; the impacts upon the community; the local and global
28 environment; and the short-term and long-term interests of the
29 benefit corporation. In addition, the directors may consider
30 resources, intent, and conduct of any person seeking to acquire
31 control of the corporation and other pertinent factors or
32 the interests of any other group that the directors deem
33 appropriate.

34 LIABILITY. The bill provides that a director is not liable
35 for any failure of the benefit corporation to accomplish a

1 general or specific public benefit purpose.

2 LEGAL ACTIONS. This bill prohibits a person from bringing an
3 action against a benefit corporation or its directors, except
4 in a benefit enforcement proceeding. A benefit enforcement
5 proceeding can only be commenced by the corporation, a
6 shareholder, a director, a person that holds 10 percent or
7 more of the equity interests in an entity of which the benefit
8 corporation is a subsidiary, or other person specified in the
9 benefit corporation's articles of incorporation or bylaws.

10 ANNUAL REPORT. The bill requires that a benefit corporation
11 prepare an annual benefit report which must be delivered to
12 its shareholders not later than 120 days after the close of
13 its fiscal year or the same time as it delivers any other
14 annual report to its shareholders, and to post the report
15 on its internet site. The report must include the process
16 and rationale for selecting the third-party standard used to
17 prepare the benefit report, the ways in which the benefit
18 corporation pursued its general and specific public benefits,
19 any circumstances that hindered the creation of a general or
20 specific public benefit, an assessment of the overall social
21 and environmental performance of the benefit corporation
22 (prepared in accordance with a third-party standard), and
23 a statement prepared by a specially designated director
24 indicating whether the benefit corporation failed to pursue its
25 general or any specific public benefit purpose. The bill also
26 requires the benefit corporation to file the benefit report
27 with the secretary of state and pay the secretary of state a
28 filing fee.